1950

File No. O. Seaward Artillary Practice/50
Legal Department.
A **BRANCH**

Subject:—

Opinions under the

Seaward Artillery Practice

Act, 1949

E
1-5

File No. O. Seaward Artillary Practice/50

Gen. 194 e.

296-A

C O N T E N T S.

Legal Department File No. O. Seaward Artillary Practice /50.

Sr.No.	R.I./O.NO.	Subject	Pages.
		Opinions under the Seaward Artilarry Practice Act, 1949.	
1	O.No.60/8-3-50 (H.M.,R.D.).	RE: Authorising to carry out Seaward Artillary Practice. Issue of notice in advance in respect of in order to warn the residents of the area within which the practice ~~xxxxxx~~ is to be carried out.	1-4
2	O.No.1722/7-2-50.	Question whether the specific authorisation of the Prov. Govt. under sec. 3(1) of the Act, the Seaward Artillary Practice is permissible.	5-6

UR - 2017
R.S.R.
20/7

Office of the R. L. A.

Under section 3(1) of the Seaward Artillary Practice Act, 1949, the State Government may by notification in the Official Gazette authorise the carrying out of seaward artillery parctice over any area specified in the nètification during any specified period or periods. A notification issued under this provision by the State Government would amount to the State Government authorising the carrying out of seaward artillery ~~xxx~~ practice. The word "may" would clearly indicate that it is entirely within the discretion of the State Government to authorise or decline to authorise the carrying out of such seaward artillery practi~~xx~~ -ce. But if it wants to authorise the carrying out of such seaward artillery parctice, it cannot do so unless a notice of its intention so to do is duly published as provided in sub-section (2). Since in the present case the seaward artillery practice is to be carried out on 10th March at Worli, section 3(2) cannot be complied with and consequently the State Government cannot issue any notification authorising it ~~xx~~ under section ~~3(2)~~ 3(1).

The issue of a notice under section 3(2) is intended to give a due warning to the resident of the area within which the seaward artillery practice is to be carried out. The effect of a notification issued under section 3(1) would be to ~~gi~~ give certain powers to the authorities for the purposes of the ~~xxxx~~ seaward artillery practice (see section 4). Under section 5 compensation can be determined and under section 7 obstruction or interference with the carrying out of the seaward artillery practice or entering or remaining

in any camp without authority would be offences. Under section 8 protection of action under this Act is provided for and no suit or other legal proceedings shall lie against the Central Gomernment or the State Government in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. It is, therefore, clear that in cases where the seaward artillery practice is carried out without being authorised by the State Government x under section 3(1), the protection of the Act would not be available. The view stated at 'A' of the Collector's letter at p. 56 ante is correct.

It is true that there is no law which prohibits military manoeuvres except under a specific authorisation from the State Government. The authorisation of the State Government would give certain protection to the damage caused to the person and property as a result of such x military manoeuvres and x for that purpose the Seaward Artillery Practice Act has been passed. In England similar Acts are in force (see Military Manoeuvres Acts, 1879 and 1911, 60 & 61 Victoria c. 43; and 1 & 2 Geo. 5 c. 44).

As statee above, the Bombay State Government cannot issue any authorisation in the present case under section 3(1) in view of the seaward artillery practice being proposed to be held on 10th March. Any permissipn to be granted by Government would be by an executive order which would not afford protection either to the military authorities or to Government. On the contrary, such permission may involve Government

in difficulties; for in the event of any damage to the person and property as a result of the artillery practice, ordinarily the Central Government would be liable and by issuing a permission, the State Government might be construed as sharing that liability.

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

H.M. R.D. No. 60
dt. 8-3-56

R.D.P.
9/7/56

S.C.

Office of the R. L. A.

The legal position is very clearly laid down in section 3 of the Seaward Artillery Practice Act, 1948. A notice of the Provincial Government 's intention of issuing a notification has to be issued first, under sub-section (2) of section 3 the notice has to be published in the manner provided for by sub-section (3); and it is only after the expiry of two months from the date of the first publication of t he notice that a notification can be issued under sub-section (1). No seaward artillery practice can be carried out unless all this procedure is followed. Once the notification under sub-section ~~(2)~~ (1) of s ection 3 is issued, no further ~~s~~ authorization is necessary.

Id/- (XXXX (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to R.D.No.1722,dated the 7th February 1950.

R.D.P.
9/7/56

S.C.